



**Commission on Peace Officer Standards and Training**

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**Subject: Government Code Section 1031.2 Provides Law Enforcement Agencies  
Greater Latitude in Sequencing the Peace Officer Background Investigation**

AB 2028 was signed into law by the Governor on September 27, 2008, and will go into effect on January 1, 2009. With the passage of AB 2028, Section 1031.2 is added to the Government Code, providing law enforcement agencies with greater latitude in situating the background investigation within the larger peace officer hiring process. The intent of this POST-sponsored legislation is to help California law enforcement agencies navigate between two conflicting statutory obligations: (1) the conduct of thorough peace officer background investigations, as mandated by Government Code 1031(d), and (2) the lawful sequencing of medical and non-medical inquiries per the California Fair Employment and Housing Act (FEHA).

Specifically GC 1031.2 reads, “... *the collection of nonmedical or nonpsychological information of peace officers, in accordance with a thorough background investigation ... may be deferred until after a conditional offer of employment is issued if the employer can demonstrate that the information could not have reasonably been collected prior to the offer.*”

POST submitted a request for guidance on this issue to the U.S. Equal Employment Opportunity Commission (EEOC). In their detailed response, the EEOC explained that, given the circumstances surrounding the background investigation of peace officers in California as explained by POST, the following aspects of the background investigation could be lawfully conducted *after* a conditional offer is extended: (1) the collection of documents that may include protected information or that require considerable time to acquire, and (2) the “physical investigation” i.e., contacts and interviews with relatives, friends, employers, and any other references. The passage of AB 2028 ensures that the guidance provided by the EEOC with respect to the ADA applies equally under state fair employment law (i.e., FEHA).

At the post-offer stage, background investigators may ask whatever is necessary to conduct a thorough investigation, as long as the inquiries are job-related and consistent with business necessity. The investigator is also free to communicate with the screening psychologist and physician to ensure that each evaluator has the information necessary to make their respective assessment, per POST requirements.

A more detailed explanation of the implications of GC 1031.2 for peace officer background

investigations, as well as the January 16, 2008 letter from POST to the EEOC asking for guidance and the May 1, 2008 response from the EEOC appear on the POST website at [http://www.post.ca.gov/bulletin/doc/AB\\_2028/2008-22-Supplement.pdf](http://www.post.ca.gov/bulletin/doc/AB_2028/2008-22-Supplement.pdf).

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